

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JORGE N. ARRELLANO-LOPEZ,

Plaintiff,

V.

J. GONZALES, et al.,

### Defendants.

Case No. 1:23-cv-00093-EPG (PC)

**ORDER DENYING MOTION TO AMEND  
COMPLAINT AS UNNECESSARY**

(ECF No. 12)

**ORDER GRANTING PLAINTIFF AN  
EXTENSION TO AUGUST 9, 2023 TO FILE  
AN AMENDED COMPLAINT OR  
OTHERWISE RESPOND TO THE COURT'S  
SCREENING ORDER**

Plaintiff is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff's original complaint alleges that he was attacked by an inmate in retaliation for filing grievances against a correctional officer. At screening, the Court concluded that only the following claims should be allowed to proceed: Plaintiff's claim for failure to protect in violation of the Eighth Amendment against Officer J. Gonzales and Plaintiff's claim for retaliation in violation of the First Amendment against Officer J. Hardin. (ECF No. 10). The Court granted Plaintiff thirty days to (1) file a notice that he wanted to proceed on these claims, or (2) file a first amended complaint, or (3) to file a notice stating that he wished to stand on his complaint and have it reviewed by a district judge.

On July 17, 2023, Plaintiff filed a motion for leave to file an amended complaint and filed a copy of his proposed amended complaint. (ECF Nos. 11, 12). The proposed amended complaint adds Defendants, allegations, and claims. Notably, Plaintiff attaches his original complaint to the

1 proposed amended complaint and appears to try to incorporate it by reference in his proposed  
2 amended complaint. (ECF No. 11, p. 3 – “Plaintiff facts one incorporated in his supplemental  
3 pages hereto for grounds, and it came to incorporated at the original complaint.”).

4 The Court will deny Plaintiff’s motion to amend as unnecessary because the Court already  
5 granted him permission in its screening order to file a first amended complaint.

6 However, to the extent that Plaintiff is requesting permission to incorporate his original  
7 complaint by reference in his proposed amended complaint, permission is denied. Notably, as the  
8 Court stated in its screening order, “an amended complaint supersedes the original complaint,  
9 Lacey v. Maricopa County, 693 F.3d. 896, 907 n.1 (9th Cir. 2012) (en banc), and must be  
10 complete in itself without reference to the prior or superseded pleading, Local Rule 220.” (ECF  
11 No. 10, pp. 7-8); Local Rule 220 (“Unless prior approval to the contrary is obtained from the  
12 Court, every pleading to which an amendment or supplement is permitted as a matter of right or  
13 has been allowed by court order shall be retyped and filed so that it is complete in itself without  
14 reference to the prior or superseded pleading.”).

15 Accordingly, IT IS ORDERED that:

- 16 1. Plaintiff’s motion for leave to amend (ECF No. 12) is denied as unnecessary.
- 17 2. Plaintiff is granted an extension to August 9, 2023, to file an amended complaint.
- 18 3. Any amended complaint must be complete in itself and cannot reference, seek to  
19 incorporate, or attach as an exhibit Plaintiff’s original complaint. The proposed  
20 amended complaint must name all Defendants and list all claims that Plaintiff  
21 wishes to bring, including those claims that the Court previously determined could  
22 survive screening in his original complaint.
- 23 4. Alternatively, by no later than August 9, 2023, Plaintiff can choose to notify the  
24 Court in writing that he does not want to file an amended complaint and instead  
25 wants to proceed only on the following claims from his original complaint:  
26 Plaintiff’s claim for failure to protect in violation of the Eighth Amendment  
27 against Officer J. Gonzales and Plaintiff’s claim for retaliation in violation of the  
28 First Amendment against Officer J. Hardin.

1           5. As the final alternative, by no later than August 9, 2023, Plaintiff may notify the  
2           Court in writing that he wants to stand on his original complaint.  
3           6. Failure to comply with this order may result in the dismissal of this action.

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5 IT IS SO ORDERED.  
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7           Dated: July 19, 2023

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11           /s/ *Evan P. Gross*  
12           UNITED STATES MAGISTRATE JUDGE  
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